

AUCTION REFORM ACT OF 2002

MAY 7, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 4560]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4560) to eliminate the deadlines for spectrum auctions of spectrum previously allocated to television broadcasting, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 4560, the Auction Reform Act of 2002, is to eliminate the deadlines for the auctioning of spectrum located in the 698–806 MHz band (700 MHz band) and the conflict that exists in statute regarding whether the Federal Communications Com-

mission (the Commission) has the authority to determine when the auctioning of such spectrum should occur.

H.R. 4560 would prevent the Commission from conducting two auctions (Auction #31 and Auction #44) of spectrum in the 700 MHz band on June 19, 2002 because conducting these auctions would greatly undermine sound telecommunications policy and the proper management of our nation's electromagnetic spectrum. Television stations that use Channels 52–69 currently occupy the 700 MHz band, and will do so until the digital television transition is complete. As a result, conducting Auctions #31 and #44 in June would likely prevent the spectrum from being put to its highest and best use. In addition, the auctions would occur before the Executive Branch determines whether additional spectrum will be made available for advanced commercial mobile services, which would prevent companies interested in providing such services from determining how much they should value spectrum in the 700 MHz band.

H.R. 4560 has three main components. First, the bill removes the statutory deadlines for the receipt of revenues derived from the auctioning of the 700 MHz band. Second, the bill prohibits the Commission from commencing or conducting Auctions #31 and #44 on June 19, 2002. Third, H.R. 4560 requires the Commission to report to Congress one year after the date of enactment regarding when the Commission intends to conduct Auctions #31 and #44 as well as the progress that has been made in the digital television transition and the assignment and allocation of spectrum for advanced mobile communications services.

BACKGROUND AND NEED FOR LEGISLATION

When Congress enacted the Balanced Budget Act of 1997 (BBA '97), Congress directed the Commission to auction spectrum in the 700 MHz band for commercial use. Twenty-four MHz of spectrum in that band was reserved for public safety use, and six MHz was reserved essentially for buffers between the commercial users and the public safety users of the band. Thirty MHz was designated for commercial use in the so-called Upper 700 MHz band (747 MHz–806 MHz), and forty-eight MHz was designated for commercial use in the so-called Lower 700 MHz band (698 MHz–746 MHz).

BBA '97 required the receipts from the auction of the Lower 700 MHz band to be deposited in the Treasury by September 30, 2002. BBA '97 also required the auction for the Upper 700 MHz band to commence after January 1, 2001. The Consolidated Appropriations Act of 2000 amended the BBA '97 to require that the proceeds from the Upper 700 MHz band be deposited by September 30, 2000.

Despite the deadline, the Commission has postponed the auction of the Upper 700 MHz band five times. In 2000, when the Commission first delayed the auction, the agency recognized that it faced conflicting statutory requirements. While the Consolidated Appropriations Act contains the deadline for the deposit of receipts for the Upper 700 MHz auction, section 309(j)(3)(E)(ii) of the Communications Act requires the Commission to include safeguards in auctions that, among other things, “ensure that, in scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * to ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and

evaluate the availability of equipment for the relevant services.” The Commission also found that the Communications Act requires the agency “to design our auction rules and procedures so as to manage the radio spectrum effectively and efficiently in the public interest.” (Cellular Telecommunications Industry Association et al.’s Request for Delay of the Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for September 6, 2000 (Auction 31), Memorandum Opinion, FCC 00–304 at ¶ 6 (rel. September 12, 2000))

The Commission concluded that “[i]n complying with conflicting statutes, and resolving those directives as we proceed toward an auction, we believe the Commission’s primary goal should be to conduct an auction that is fair, efficient, puts the spectrum to the best use, and thereby best serves the public interest.” (Cellular Telecommunications Industry Association et al.’s Request for Delay of the Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for September 6, 2000 (Auction 31), Memorandum Opinion, FCC 00–304 at ¶ 11 (rel. September 12, 2000)) The Commission also concluded that a delay was appropriate so that bidders would have an adequate time to develop business plans and assess market conditions.

As the Commission recognized in 2000, the agency has the authority to delay the auctioning of the 700 MHz band. In *Western Coal Traffic League v. Surface Transportation Board*, 216 F. 3d 1168, 1173 (2000), the United States Court of Appeals for the District of Columbia (D.C. Circuit) held that federal agencies are permitted to ignore statutory deadlines “where doing so is administratively necessary in order to realize the broader goals of the same statute.” The Communications Act’s goal of ensuring “that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant service” provides the Commission with the authority to ignore the statutory deadlines for auctioning the 700 MHz band.

The unique dynamics of the 700 MHz band create the statutory conflict that exists. With most auctions, the spectrum for which entities bid is either unencumbered at the time of auction or will be unencumbered by a specific date shortly after the auction is held. With the 700 MHz band, on the other hand, the spectrum is currently occupied by television stations broadcasting an analog signal on Channels 52–69. The broadcasters are not required to vacate the band until December 31, 2006 or when more than 85 percent of the television households in a particular market have access to digital television, whichever date is later. Thus, if the 85 percent threshold is not exceeded in a given market, a television broadcaster would not be required to relinquish its spectrum in the 700 MHz band for conceivably long beyond December 31, 2006. Some Members of the Committee have expressed the concern that the transition to digital television has been slow and that many communities will not achieve 85 percent penetration of digital television by the end of 2006 at the current pace. While the Commission and industry groups have recently undertaken several initiatives intended to speed the vacation of the 700 MHz band by the broadcasters, it is not clear what the impact of these initiatives will be.

This situation makes bidding on licenses in the 700 MHz band very difficult. The spectrum has propagation characteristics that make it attractive for high-speed mobile data operations. But it was not clear in 2000, nor is it clearer today, when the broadcasters will vacate the 700 MHz band. That makes it very difficult to develop a business plan involving spectrum in the band, assess the market conditions for use of the band, or evaluate when manufacturers would produce equipment for new services in a band for which there is no clear timetable for the exit of existing licensees.

In addition to concerns about when the band will be available for mobile data services, it is not clear whether the 700 MHz presents the optimum band in which to offer such services. Several other bands have been under consideration by the Commission and the Administration for allocation and assignment for third-generation wireless and other advanced mobile services. Some of these other bands might be better for companies that currently provide second-generation wireless services and for international harmonization purposes. But it is not clear whether these other bands will be made available, especially the 1755–1850 MHz band, which is currently occupied by Department of Defense and other governmental spectrum operations.

Until decisions are made regarding the availability of these other bands, companies cannot determine the extent to which they should value the spectrum in the 700 MHz band. That band may be the best spectrum available for advanced mobile services. Several key decisions are not scheduled to be made until the Summer, however, after the 700 MHz band is currently scheduled to be auctioned.

The Commission currently has the authority to delay Auctions #31 and #44. The agency is faced with conflicting statutory mandates—one that requires that the auctions occur, and one that requires that the Commission refrain from conducting the auctions at this time. When faced with such a conflict in statute, the Commission retains the discretion not to conduct the auctions. The Commission should be using this discretion to delay the auctions until sound telecommunications and spectrum management policy dictate that conducting the auctions is appropriate, and until the requirements of section 309(j)(14)(C)(ii) of the Communications Act can be satisfied.

Because the Commission intends to conduct the auctions in June, the Congress must act to remove any ambiguity or conflict in the law that gives the Commission the impression that it is required to conduct the auctions then. H.R. 4560 will accomplish that goal by stripping the deadlines from the relevant statutes.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On Thursday, May 2, 2002, the Full Committee met in open markup session and ordered H.R. 4560 favorably reported to the House by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 4560 reported. A motion by Mr. Tauzin to order H.R. 4560 reported to the House was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 4560 is to prevent the Commission from conducting Auctions #31 and #44 until the nation's digital television transition and spectrum management policy dictate that such auctions should occur.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4560, the Auction Reform Act of 2002, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 2, 2002.

Hon. W.J. "BILLY" TAUZIN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4560, the Auction Reform Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

ROBERT A. SUNSHINE
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4560—Auction Reform Act of 2002

Summary: H.R. 4560 would repeal statutory deadlines for auctioning licenses for the use of some of the electromagnetic spectrum currently allocated to television channels 52 through 69. The bill also would direct the Federal Communications Commission (FCC) to issue a report within one year after enactment on issues related to rescheduling the auction of those frequencies.

The budgetary effects of the bill would depend on both actions by the FCC and economic factors. Proceeds could be higher than expected under current law if all of the frequencies are auctioned before the FCC's auction authority expires in 2007; but they could be lower or zero if such auctions are not completed by 2007. On balance, CBO estimates that enacting this bill would reduce expected proceeds from the authority to auction these frequencies. It would therefore lead to a net loss of receipts and thus an increase in direct spending of \$1.4 billion over the 2003–2007 period. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

H.R. 4560 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4560 is shown in the following table. The costs of this legislation fall within budget function 950 (undistributed off-setting receipts).

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
CHANGES IN DIRECT SPENDING						
Channels 52–69 auction receipts:						
Under current law:						
Estimated budget authority	0	–2,800	–600	–600	0	0
Estimated outlays	0	–2,800	–600	–600	0	0
Proposed changes:						
Estimated budget authority	0	2,800	600	600	–1,300	–1,300
Estimated outlays	0	2,800	600	600	–1,300	–1,300
Channels 52–69 auction receipts:						
Under H.R. 4560:						
Estimated budget authority	0	0	0	0	–1,300	–1,300
Estimated outlays	0	0	0	0	–1,300	–1,300

Basis of estimate: Under current law, the spectrum currently allocated to television channels 52 through 69 should be available for new commercial uses after the television stations complete their expected transition from analog to digital broadcasting technology. CBO expects that, under current law, this transition will occur well after the statutory goal of December 31, 2006. Companies would discount the amount they are willing to pay for such licenses because of the lag between an auction and completion of the transition to digital television. We estimate that proceeds from the FCC's auction of these bands, which is scheduled to start on June 19, 2002, would total about \$4 billion under current law.

CBO expects that repealing statutory deadlines for licensing these frequencies would affect auction proceeds in two ways. On the one hand, if all of the affected spectrum were auctioned at a

later date, we expect that total proceeds would be greater than \$4 billion. On the other hand, eliminating the statutory deadline would increase the likelihood that these bands would not be auctioned before the FCC's auction authority expires in 2007, particularly because the transition to digital television is likely to occur well after that point. For this estimate, we assume there is a 50 percent chance that auctions of all of the affected spectrum would be held by 2007. (If they do occur, proceeds would most likely be collected after 2005.) Our estimate of proceeds under this bill—a total of \$2.6 billion over the 2003–2012 period—reflects the net effect of these two factors.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects through fiscal year 2006 are counted.

	By fiscal year, in millions of dollars										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in outlays	0	2,800	600	600	–1,300	–1,300	0	0	0	0	0
Changes in receipts	Not applicable										

Intergovernmental and private-sector impact: H.R. 4560 contains on intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Kathleen Gramp; Impact on state, local, and tribal governments: Angela Seitz; Impact on the private sector: Jean Talarico.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the bill, the Auction Reform Act of 2002.

Section 2. Findings

Section 2 makes certain Congressional findings.

Section 3. Repeal of deadlines for spectrum auctions

Section 3 repeals the statutory deadlines for the deposit of receipts from the auctioning of spectrum in the 700 MHz band.

Section 4. Termination of scheduled auctions

Section 4 prohibits the Commission from commencing or conducting Auctions #31 and #44 on June 19, 2002.

Section 4 requires that the Commission submit a report to Congress one year after the date of enactment that specifies when the Commission intends to reschedule Auctions #31 and #44 and describes the progress that the Commission has made with respect to the digital television transition and the assignment and allocation of additional spectrum for advanced mobile communications services.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

SECTION 309 OF THE COMMUNICATIONS ACT OF 1934

SEC. 309. ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES.

(a) * * *

(j) USE OF COMPETITIVE BIDDING.—

(1) * * *

* * * * *

(14) AUCTION OF RECAPTURED BROADCAST TELEVISION SPECTRUM.—

(A) * * *

* * * * *

(C) SPECTRUM REVERSION AND RESALE.—

(i) * * *

(ii) Licensees for new services occupying spectrum reclaimed pursuant to clause (i) shall be assigned in accordance with this subsection. [The Commission shall complete the assignment of such licenses, and re-

port to the Congress the total revenues from such competitive bidding, by September 30, 2002.】

* * * * *

SECTION 3007 OF THE BALANCED BUDGET ACT OF 1997

SEC. 3007. DEADLINE FOR COLLECTION.

The Commission shall conduct the competitive bidding required under this title or the amendments made by this title in a manner that ensures that all proceeds of such bidding are deposited in accordance with section 309(j)(8) of the Communications Act of 1934 not later than September 30, 2002. *This section shall not apply to the band of frequencies between 698 and 806 megahertz, inclusive.*

SECTION 213 OF THE ACT OF NOVEMBER 29, 1999

(H.R. 3425 of the 106th Congress and enacted into law by section 1001(a)(5) of Public Law 106–113)

SEC. 213. (a) REVISED SCHEDULE FOR COMPETITIVE BIDDING OF SPECTRUM.—(1) * * *

【(2) Commencing on the date of the enactment of this Act, the Federal Communications Commission shall initiate the competitive bidding process previously required under section 337(b)(2) of the Communications Act of 1934 (as repealed by the amendment made by paragraph (1)).

【(3) The Federal Communications Commission shall conduct the competitive bidding process described in paragraph (2) in a manner that ensures that all proceeds of such bidding are deposited in accordance with section 309(j)(8) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)) not later than September 30, 2000.】

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